U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: [redacted] Office: Vermont Service Center Date: NOV 8 2000

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

Public Copy

IN BEHALF OF PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

[redacted]

DISCUSSION: The employment-based immigrant visa petition was initially approved by the Director, Vermont Service Center. On the basis of new information received and on further review of the record, the director determined that the petitioner was not eligible for the benefit sought. Accordingly, the director properly served the petitioner with notice of intent to revoke the approval of the immigrant visa petition, and his reasons therefore, and ultimately revoked the approval of the petition on November 9, 1999. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

Part 4 of the Form I-140 petition, prepared by counsel's office, indicates that no previous immigrant visa petition had ever been filed on the petitioner's behalf. Service records, however, reflect that this statement is false. The petitioner in this proceeding was previously the beneficiary of an immigrant visa classification, receipt number SRC 99 024 50604, filed in October 1997 and approved that December. Both petitions were handled by the same counsel's office.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that

small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a surgeon. The regulation at 8 C.F.R. 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence which, he claims, meets the following criteria.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

Counsel states:

> [The petitioner's] work has earned him distinctions from a number of his field's leading institutions. His exceptional work at [redacted] earned him the honor of Best Registrar, for example. This is the English equivalent of Chief Resident, and at such a particularly renowned institution is an outstanding honor. In England, [the petitioner] was also granted Full Registration, thus permitting him to practice medicine in India and all of the United Kingdom.

Best Registrar, from counsel's description, appears to be an employment position rather than a prize or award. Furthermore, the decision to place the petitioner in that position came from no national or international body, but from the administration of the one hospital where he worked. Whatever the hospital's reputation, there is no evidence that any physician earns recognition outside that hospital by serving as Best Registrar.

The Full Registration appears to be nothing more than a license to practice medicine. The petitioner has submitted nothing to show that only a small minority of surgeons trained in the United Kingdom receive Full Registration.

[redacted]

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

Counsel states:

> [The petitioner] is . . . a member of the most prominent and influential organizations within his field. He is a Fellow of the Royal College of Surgeons, the U.K.'s most illustrious medical institution. He is also an active member of such prominent societies as the American Society for Plastic and Reconstructive Surgery, the British Orthopedic Association, and the British Medical Association [as well as the American Medical Association].

The requirement is not that the association as are "prominent and influential," but that they require outstanding achievements of their members. An association may become powerful simply by virtue of its sheer size, in which case it is in the association's interest to make it fairly easy to become a member. An association which admits virtually any dues-paying physician does not qualify under this criterion. The burden is on the petitioner to establish the membership requirements of the associations named above. The record contains nothing from the associations to establish their membership requirements.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

Counsel asserts that the petitioner fulfills this criterion, having served as a resident at [redacted] and as a registrar at three U.K. hospitals.

The supervisory or mentoring duties associated with the above positions (which, themselves, appear to represent advanced training rather than career positions) do not rise to a national or international level. By counsel's standard, every teacher and supervisor serves as a "judge" of his or her students or subordinates. Clearly, a universally inclusive standard is worthless as a means of distinguishing the very top in the field from the majority in that field. The record does not indicate that the petitioner has, in any meaningful sense, judged the work of others in a way that would demonstrate significant acclaim.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

Counsel states:

> [The petitioner's] clinical work places him at the very forefront of the quickly evolving field of Surgery. He has consistently demonstrated not only an ability to maintain pace with the discipline's latest advances, but also to contribute to its advancement as well. . . .
>
> [The petitioner's] work in a number of subspecialties of Surgery is nothing short of revolutionary. For example, his numerous accomplishments in the quickly developing field of Arthroscopic Surgery place him in a very select group of surgeons worldwide. Similarly, his advances in such arenas as total joint replacement, Oncological Surgery, and the grafting of artificial skin, to name just a few, make him an absolutely invaluable surgeon.
>
> Demonstrative of his extraordinary accomplishments are the many innovations which [the petitioner] has contributed to the field. His Earclip . . . will save thousands from needless suffering. His development of a new technique for the placement of inter-locking screws during the reparation of long broken bones will save countless patients from the many drawbacks of extensive, elongated operations.

The petitioner submits four letters in support of his claim. [redacted] chief of Otolaryngology and Head and Neck Surgery at [redacted] has supervised the petitioner's training at that institution. [redacted] states that the petitioner's "unrivaled skills enable him to be one of the very few at the top of his profession. [redacted] deems the petitioner "a recognized leader" in plastic surgery, and states that the petitioner "has also gained renown for his pioneering work in the Burn Unit at [redacted]" [redacted] describes the Earclip, mentioned above, as "a new device which revolutionizes the treatment of earlobe keloids." [redacted] repeatedly describes the petitioner using terms such as "trailblazing," "influential," "preeminent," "absolute leader" and many others. It remains that [redacted] has worked directly with the petitioner, and whatever [redacted] own opinions, [redacted] submits no documentary evidence to establish first-hand that his opinions are shared by the national or international community of surgeons.

Three other surgeons, all of whom have supervised various stages of the petitioner's training, offer less detailed endorsements but affirm that the petitioner is at the top of his field. They indicate that the Earclip is "currently in the early stages of development," indicating that it is too early to determine the significance of this innovation. With regard to the petitioner's new method of setting long broken bones, the witnesses attest to its advantages, but offer no actual evidence that this method is

used at any hospital where the petitioner has not personally worked. A finding of sustained acclaim must rest on objective documentation, rather than on the assertions of a handful of witnesses selected by the petitioner.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

As of the petition's filing date, the petitioner had co-written one published article which appeared in the [redacted] section of the [redacted] The petitioner states that he has submitted several additional articles for publication, but they had not been published, or even accepted for publication, as of the petition's filing date. The act of submitting a manuscript is not inherently indicative of extraordinary ability.

The petitioner claims to have made presentations at medical conferences, but he has not demonstrated the national or international nature of these conferences. Presentation of one's findings is a fundamental component of scientific and medical research, and the petitioner does not satisfy this requirement simply because he, like every researcher, made others aware of his work.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

Counsel asserts that the petitioner's positions as resident and registrar at various hospitals fulfill this criterion, but no evidence supports this claim. These positions appear to involve clinical practice and supervision of a small fraction of the hospital staff, rather than any controlling role over the entire hospital.

The petitioner's curriculum vitae indicates that, at the time of filing, the petitioner was a "Resident in Surgery [at] [redacted]" Webster's Ninth New Collegiate Dictionary defines a "resident" in this sense as "a physician serving a residency," and it defines a "residency" as "a period of advanced training in a medical specialty." Therefore, it is the petitioner's contention that he is one of the nation's most acclaimed surgeons even though his own career is still at a stage of "advanced training."

After initially approving the petition, the director notified the petitioner of the Service's intent to revoke the approval of the petition, on the grounds that the record does not place the petitioner at the top of his field. The director acknowledged the evidence of record, but stated that such evidence was not

sufficient to distinguish the petitioner from the majority of others practicing in the same specialty. The director also noted that other immigrant visa petitions have been filed on behalf of the petitioning alien.

In response, counsel argues that the petitioner "has proven time and again that he is virtually peerless in the practice of surgery," and that the director must yield to the judgment of experts who have acknowledged the petitioner's extraordinary ability. Counsel addresses several of the eligibility criteria not with new evidence, but by arguing that the petitioner's previous evidence meets the required threshold. The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). Therefore, we are not obligated to accept counsel's interpretation of the importance of the evidence of record. None of the actual documentary evidence in the record demonstrates that the petitioner is among the most widely recognized surgeons in the United States, the United Kingdom, or elsewhere. The burden is on the petitioner to establish, objectively, such recognition, and attempts by counsel to inflate the importance of lesser evidence can never compensate for the lack of such objective evidence of acclaim.

The petitioner has submitted two further letters, again from physicians who have worked or studied directly with the petitioner. Even if every physician who has ever worked with the petitioner regards him as the best medical practitioner in the world, their statements would not demonstrate sustained acclaim at a national or international level. Just as recognition at one single hospital is not "national" in scope, the petitioner is not recognized "internationally" merely by virtue of having trained on two different continents. The petitioner has submitted absolutely nothing to show that the views of his mentors are shared by anyone in the medical profession who has not worked with him personally. If praise, however effusive, for the petitioner is limited to his supervisors and co-workers, then that praise is not national or international.

The director revoked the petition, stating that the petitioner has failed to submit independent evidence to overcome the grounds stated in the notice of intent to revoke. On appeal, counsel maintains that the letters submitted in response to the notice were "from independent experts," although the record shows that both of the witnesses have worked directly with the petitioner, one at [redacted] the other at [redacted] Former classmates and co-workers are obviously not "independent" from the petitioner.

The statute demands "extensive documentation" of an alien's sustained national or international acclaim. The petitioner's

actual documentation is minimal, and the letters in the record are from a very narrow range of witnesses, all with close ties to the petitioner, many of whom make sweeping assertions for which documentary support should be readily available, yet which is absent from the record. For instance, witnesses attest to the widespread use of the Earclip, but there is no published material about this device or documentation from the manufacturer to show that significant numbers of the device have been distributed.

Counsel cites various court cases which, counsel asserts, are "virtually identical" to the matter at hand. Counsel contends that the director has no discretion to reconsider the prior approval of the petition, and that the director has not shown "that the Petitioner has fallen from his level of talent." The law and regulations clearly allow for the revocation of petitions approved in error. Furthermore, the director did not hold that the petitioner had fallen from the top of his field; rather, the director found that the petitioner was never at the top to begin with and therefore the initial approval of the petition was not justified. In Sussex Engineering, Ltd. v. Montgomery, 825 F.2d 1084 (6th Cir. 1987), the Court of Appeals held that it is absurd to suggest that the Service must treat acknowledged errors as binding precedent.

For all the testimony to the effect that the petitioner is almost universally recognized as a groundbreaking, revolutionary surgeon, the actual, objective documentation in the record offers negligible support. Review of Service records also raises further questions in this regard.

The director had previously noted that other petitions have been filed on behalf of the petitioner. One of these, receipt number SRC 98 024 50604, was filed by a cardiologist's office in [redacted] in October 1997. That office indicated that it sought to employ the alien as a medical administrator at a cardiologist's practice for $915 per week ($47,580 per year). The labor certification accompanying this petition indicates that the alien would not be practicing medicine, but rather would handle records, insurance, and other administrative concerns of the petitioning medical practice.

Certainly, if the petitioner is, as he claims, a world-renowned plastic surgeon who has "revolutionized" the practice of medicine, then his decision to seek employment performing administrative and, essentially, clerical duties for a cardiologist defies easy explanation.

Furthermore, section 203(b)(1)(A)(ii) of the Act, reflected in 8 C.F.R. 204.5(h)(5), requires evidence of the alien's intent to continue working in the field of claimed extraordinary ability. In this instance, the petitioner's field is the practice of plastic

and orthopedic surgery. Yet the petition from the [redacted] medical practice indicates that the petitioner would perform administrative, rather than clinical, duties, for a cardiologist (which is not the petitioner's medical specialty).

This evidence presents three possible conclusions: (1) the petitioner seeks to work as an administrator rather than as a surgeon, in which case he does not seek to continue to work in the field of claimed extraordinary ability; (2) the petitioner has never intended to work as an administrator, in which case he acted in bad faith by participating in the [redacted] visa petition, thereby claiming to accept the position named on the labor certification; or (3) the petitioner intends eventually to work as a surgeon, but for the time being the best job offer he could secure was as a medical office administrator. This third option is obviously inconsistent with the claim that he is a world-renowned surgeon.

The evidence of record does not readily suggest which of the above three alternatives holds true in this case, but no credible fourth alternative comes readily to mind. For example, one could suggest, hypothetically, that the petitioner achieved national acclaim only after the filing of that first petition in October 1997, but then one would have to ignore all of the purported evidence of acclaim which predates the filing of that petition, such as the petitioner's positions in the United Kingdom and his 1996 journal publication.

The nature of the employment covered by the initial [redacted] petition, coupled with the failure to disclose that earlier petition in this present proceeding, raises further questions of good faith[1] and emphasizes once more why we must rely on concrete, objective documentation rather than on unsupported claims and testimony. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582 (BIA 1988).

The petitioner has demonstrated that he is a successful plastic/ orthopedic surgeon who has won the respect of those who have worked with him. Nevertheless, the praise of those co-workers, however

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[1]In Ameeriar v. I.N.S., 438 F. 2d 1028 (3rd Cir. 1971), it has been stipulated that inferences logically drawn regarding purposes underlying an individual's actions are properly considered as a basis for administrative judgment of good faith or the lack thereof.

hyperbolic, is not supported by any independent, objective evidence. Counsel's assertions regarding the importance of the petitioner's evidence would carry no weight, even if counsel had not been demonstrably wrong even about such simple details as whether or not any previous petitions had been filed on the petitioner's behalf. Certainly, there is nothing in that earlier petition to suggest that the petitioner is a widely recognized surgeon, or even that the petitioner's services as a surgeon were sought at all. The absence of a job offer requirement in the pertinent statute does not compel the Service to ignore an existing job offer, or from drawing fairly obvious conclusions arising from the nature of that job offer. Even without the evidence accompanying the Florida petition, the evidence of record is not sufficient to establish extraordinary ability.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the petitioner has distinguished himself as a surgeon to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as a surgeon, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition was clearly approved in error. The director acted properly in revoking the erroneous approval of the petition. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.